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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/509,271	03/28/2005	Bernard Cleenewerck	18234	2289
7590 12/15/2008				
Leopold Presser Scully Scott Murphy & Presser Suite 300 400 Garden City Plaza Garden City, NY 11530		EXAMINER PADEN, CAROLYN A		
		ART UNIT 1794		PAPER NUMBER
		MAIL DATE 12/15/2008		DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/509,271

Applicant(s)

CLEENEWERCK ET AL.

Examiner

Carolyn A. Paden

Art Unit

1794

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 October 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 30-57 and 59-86 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 30-57 and 59-86 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S508)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

The rejection of the claims under 35 USC 112, second paragraph has been withdrawn in view of applicants' amendments to the claims.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 30-44, 46-57 and 59-86 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kawada (3,686,240) as further evidenced by applicants' admission in the specification at page 10, lines 3-21 and Defense taken together for reasons of record.

Applicant argues that palm oil is a tempering oil and the claims are directed to a non-tempering oil. This has been considered and is not persuasive. First the recitation "suitable as a non-tempering fat" is a preamble limitation that carries no weight in the process claim. Second, applicant cites column 1, lines 15-25 of Kawada as evidence that palm mid fraction is a tempering fat but this passage. The process described in the abstract of Kawada refers to the fractionation of palm oil to obtain palm mid fraction. It is not a tempering step. Applicant refers to the palm oil described in Baileys but this is Kawada is not using palm oil. I He is using

palm mid fraction. Applicant refers to the melting point of the fat produced at column 1, lines 71-72 but examiner is relying on Example 2 in the rejection. The claims are not directed to a blend of fats. The claims are directed to a fat with a certain glyceride composition made by hydrogenation. Applicant refers to the way SFI is measured in Kawada but Kawada is following a standard procedure for SFI determination. It is not seen that tempering is at issue in this passage.

Applicant provides experimental results to try to demonstrate the unobviousness of his invention at pages 12-18 of his response. These remarks are best presented in declaration form. There is no suggestion in the arguments that applicants attorney conducted these experiments.

Applicant argues that Defense does not show a non-tempering fat. This has been considered and is not persuasive. The recitation "suitable as a non-tempering fat" is a preamble limitation that carries no weight in the process claim. Applicant argues that neither Kawada nor Defense show a combination of a tempering and non-tempering fat. This has been considered but is not persuasive. Claim 30 only requires palm oil or palm oil fraction.

Applicant argues that the non-tempering fat is not shown in Kawada but Kawada is using the same fat as applicant does in his examples. The fact that he does not describe it as being non-tempering does not alone constitute unobviousness.

Claims 45 and 58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kawada as further evidenced by applicants' admission and Deffense as applied to claims 30-44, 46-57 and 59-86 above, and further in view of Higgins, Cahen or Harrod for reasons of record.

Applicant argues that the fat is a non-tempering fat. This has been considered and is not persuasive. The recitation "suitable as a non-tempering fat" is a preamble limitation that carries no weight in the process claim. Applicant argues that there is no motivation to alter the catalyst in Kawada. It would have been obvious to one of ordinary skill in the art to substitute the catalysts of Higgins, Cahen or Harrod for the catalysts of Kawada in order to provide a low trans hydrogenated fat. Applicants' arguments with respect to Kawada have been addressed above. Applicant argues that the non-tempering fat is not shown in Kawada but Kawada is using the same fat as applicant does in his examples. The fact that he

does not describe it as being non-tempering does not alone constitute unobviousness.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone number is (571) 272-1403. The examiner can normally be reached on Monday to Friday from 7 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached by dialing 571-272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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/Carolyn Paden/

Primary Examiner 1794